

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Sandwich Isles Communications, Inc.)	WC Docket No. 09-133
Petition for Declaratory Ruling)	

OPPOSITION TO SANDWICH ISLES INC. MOTION FOR STAY

On January 25, 2011, Sandwich Isles Communications Inc. (“SIC”) filed a Motion for Stay in the above-captioned matter.¹ In its motion, SIC asks that the Bureau order NECA not to take the actions that implement the Commission’s *Declaratory Ruling*.² The Bureau should dismiss SIC’s motion as procedurally improper.

The *Declaratory Ruling* was issued in response to a Petition for Declaratory Ruling that SIC filed in 2009, which sought to have the Commission resolve a dispute between NECA and its member company SIC regarding the proper amount of costs to be included in NECA’s Traffic Sensitive Pool. SIC filed a petition for reconsideration of that decision, which has not yet been acted on. Notwithstanding, NECA has implemented the *Declaratory Ruling*, including the payment to SIC pursuant to the *Ruling*.

During routine review of SIC cost studies for purposes of determining the proper data to include in NECA’s pool, NECA discovered that SIC earned approximately \$2.2 million in revenues from leasing its undersea cable and related terrestrial network to a third party, which

¹ Sandwich Isles Communications Inc., Motion for Stay, WC Docket No. 09-133 (filed Jan. 25, 2011) (“SIC Motion”).

² *Sandwich Isles Communications, Inc., Petition for Declaratory Ruling*, Declaratory Ruling, WC Docket No. 09-133, DA 10-1880 (Com. Car. Bur., rel. Sept. 29, 2010) (“*Declaratory Ruling*”).

SIC concedes constitutes revenues for unregulated services. In compliance with footnote 30 of the *Declaratory Ruling*, NECA reduced “the lease expenses subject to dispute” by this \$2.2 million amount before applying the 50 percent figure to derive includible expenses specified in the *Ruling*. SIC disputed this computation, and after approximately a six-month discussion period, NECA was forced to tell SIC it would adjust SIC’s cost studies to reflect the directives in the *Declaratory Ruling* prior to the close of the relevant two-year adjustment period permitted under the pool administration procedures.³ As such, NECA’s letter simply ensures that pool data are consistent with FCC rules and orders prior to closing NECA’s pool data for the relevant two-year period.

SIC’s Motion is quite vague about what it wants stayed. At various points in its motion it argues that the Commission “should order NECA to ‘stand down’ from its attempt to intimidate SIC into making a significant and financially harmful revision to its cost studies. . .”⁴ or “to prevent NECA from engaging in unlawful self-help,”⁵ “pending review of SIC’s Petition for Reconsideration”⁶ SIC never really says what it is asking the Commission to “stay.”

SIC cites to Sections 1.43, 1.44, and 1.102(b)(2) of the Commission’s rules to support its motion. However, those sections only apply to stays of a Commission “order or decision.” Under these cited rules, the Commission cannot issue a “stay” of a party’s actions to implement a Commission decision, when such action is not an “order or decision” of the Commission. Therefore, the instant motion is improper and should be dismissed. SIC also fails to explain what relevance its Petition for Reconsideration has on the instant issue.

³ The January 16, 2012, NECA letter announcing such action is included in SIC’s Motion as Exhibit 1.

⁴ SIC Motion at 4.

⁵ *Id.* at 5.

⁶ *Id.* at 6.

NECA should note that, regardless of the dismissibility of the motion, SIC would not suffer irreparable harm if NECA were to implement the *Declaratory Ruling* as indicated in its letter. Courts and the Commission routinely refuse to find that irreparable harm exists when there is simply a dispute as to the payment of money.⁷ Here, the consequence to SIC at most would be to receive less money from pool settlements than it believes it is entitled to receive. The Commission is capable of fashioning a remedy to rectify any nonpayment of money at a later date if it determines that NECA's actions were incorrect. In fact, the Bureau fashioned such a remedy in the *Declaratory Ruling*. SIC has utterly failed to demonstrate how the nonpayment of money in this instance would harm its "business reputation" or lead to the "permanent loss of customers."⁸ Although SIC claims to be financially "fragile", and it has threatened bankruptcy multiple times in the last two years, it has never produced any evidence to back up these assertions. As such, its call for emergency relief should be denied.⁹

For the foregoing reasons, SIC's motion for stay should be dismissed.

Respectfully submitted,

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January 27, 2011

⁷ *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958).

⁸ SIC Motion at 7.

⁹ NECA stands ready and willing to discuss informally with the Commission the proper interpretation of the *Declaratory Ruling*.

Certificate of Service

I, Gregory J. Vogt, do hereby certify that I have on this 27th day of January 2011 caused a copy of the foregoing "Opposition to Sandwich Isles Inc. Motion for Stay" to be served by electronic and first class mail upon the following:

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